IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 868 OF 2003.

Aba Gopal Shinde. ... Appellant

Versus.

Jotibha Aba Shinde and others. ... Respondents.

Shri A.A.Kumbhakoni along with Shri A.M.Kulkarni for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 27th April, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellant. The Appellant is the original Plaintiff. The suit was filed by the Appellant/Plaintiff contending that the registered deed of partition dated 20th February 1989 was obtained by the Respondents/Defendants by practicing fraud and it is a false and bogus document. The trial Court dismissed the suit and the Appellate Court has confirmed the judgment and decree of the trial Court. The learned Advocate for the Appellant submitted that the Appellate Court has recorded a finding that the suit properties were self acquired properties of the Appellant/Plaintiff. He submitted that in view of the said finding the case of the Appellant regarding the partition deed ought to have been accepted.

2. I have considered the submissions. The Courts below have recorded a finding concurrently that the plea of fraud is not established by the Appellant/Plaintiff.

A finding of fact has been recorded that the deed of partition is duly registered and the document was presented by the Appellant before the Sub-Registrar for registration. The Appellate Court has considered the evidence of attesting witness who deposed regarding the execution of the document by the Appellant. The attesting witness stated that the Appellant was not blind on the date of execution of the document. The Appellate Court noted that in his evidence the Appellant/Plaintiff nowhere deposed that in the year 1989 he was blind. The Appellate Court has noted that the attesting witness stated that the contents of the deed of partition were read over and explained to the Appellant/Plaintiff. If these are facts borne out from the record, it is difficult to accept the plea of fraud. The Courts below are right in holding that the execution of partition deed was proved.

3. Once the execution of deed of partition by the Appellant is proved the contention of the Plaintiff that it was his self acquired property has no merit. There is no substance in the Second Appeal. The Second Appeal is dismissed with no order as to costs.

Judge.